the discovery subsequent to the discharge made by parties in interest "that the actual facts did not warrant the discharge," provided that application for a revocation is made within one year after the discharge.

BANKRUPTCY—PREFERRED CREDITOR'S SET-OFF.—That a creditor who receives a payment, though innocently, after the debtor is in fact insolvent is a preferred creditor seems the prevalent construction of Sections 57*g*, 60*a*, *b*, 1 COLUMBIA LAW REVIEW, 53. But it is yet disputed whether such a creditor may avail himself of the set-off allowed by Section 60*c*. According to that Section a preferred creditor who has "in *good faith*" sold the debtor more goods on credit without security can set-off the amount of this sale "against the amount which would otherwise be recoverable from him." It has been said that the section applies only to a guilty preferred creditor described in Section 60*b*, because of the words "recoverable from him," for the reason that it is only a guilty preference which is by the act recoverable. *In re Christensen*, 4 Am. B. R., 202 (N. D. C. Iowa, 1900). Consequently, an innocent preferred creditor who offered to pay back the excess of the preference above the set-off was denied the privilege of Section 60*c*. In interpreting that section too much weight has been given to the word "recoverable," and too little to the words "in good faith." One who has received a preference knowing of his debtor's insolvency could hardly be said to make a sale later to this same insolvent debtor in good faith. There is not much likelihood that a creditor will contribute his goods to help pay debts to others; and yet, unless a guilty preferred creditor has this intention he would not be extending further credit in that good faith required by the act.

There is no good reason to believe that the word "preference" in Section 60*c* has a different meaning from the same word in Section 60*a* or Section 57*g*, and the words "recoverable from him," if read in the light of these several sections would refer to the return of any preference by any creditor as a condition *sine qua non* of his proving his claim. Accordingly, an innocent preferred creditor, the only one who can answer to the description as to giving the insolvent further credit in good faith, should be allowed to prove his claim on paying the excess of his preference over the amount of unsecured credit given after receipt of the preference. So it has been held by GROSSCUP, J., in *McKey* v. *Lee*, 5 Am. B. R. 267 (C. C. A. Ill., 1901). The few cases in which section 60*c* has been construed take it for granted that it applies to guilty preferred creditors; but in this view the fundamental purpose of the act seems to have been overlooked. The guilty preferred creditor cannot say that he has extended further credit on the faith of the payment of his previous claims, because he knew of his debtor's insolvency, and the use of words seeming on first blush pertinent to him is not of itself sufficient to controvert the general design of the Legislature to discourage any fraud on creditors.

Accordingly, it is submitted that both *In re Christensen* and

McKey v. *Lee* misconstrue the intention of the act in admitting the application of Section 60*c* to guilty preferred creditors, but that the latter case correctly applies it to an innocent preferred creditor.

FIRE INSURANCE.—WAIVER OF INCUMBRANCE PROVISION.—The New York Court of Appeals, by a division of four to three, on February 5, 1901, rendered a decision of great interest and importance to the insurance world. *Skinner* v. *Norman, Jr.*, New York Law Journal, February 25, 1901. The plaintiff sent his agent to procure insurance on a steamboat. The agent of the insurance company asked if the boat was encumbered and was told he could learn by inquiry of the owner. This inquiry he agreed to make. The policy contained a provision making it void, unless all encumbrance should be noted therein. The boat was mortgaged, but no mention of the mortgage was made in the policy. *Held*, that the company had waived the warranty against incumbrance.

It is perhaps significant that the Court puts its decision upon two grounds, which do not strengthen each other, but involve totally different principles. One is notice to the company of the encumbrance, the other is the authority of the agent to undertake to search the title of the insured. It is settled law in New York, and most jurisdictions generally, that actual knowledge of the agent of ground for forfeiture is constructive notice to the company, and that the company waives the warranty against encumbrance by issuing a policy if, at the time the application was made, the agent knew the policy could be avoided.

Van Schaick v. *Niagara Falls Ins. Co.* 68 N. Y. 434 (1877); *Gray* v. *Germania Fire Ins. Co.* 155 N. Y. 180 (1898); *Continental Ins. Co.* v. *Chamberlain*, 132 U. S. 304 (1889); *Mahoney* v. *Natl. & Life Ass'n*, L. R., 6 C. P. 252 (1871); *Germania Fire Ins. Co.* v. *McKee*, 94 Ill. 494 (1880). If, then, the agent of the company had actually known of the mortgage on the boat, the plaintiff's right to recover on the policy would be clear. But such is not the fact. The agent did not know, he merely said he would find out. Nevertheless the Court extended the doctrine of constructive notice to the company to this case, relying upon the analogy between the waiver of an unknown breach of warranty and a general release. This seems to lose sight of the real difficulty. Had the insured dealt directly with the company, instead of an agent, the analogy would be more complete. Furthermore, a general release raises no question of admitting parol evidence to vary the written instrument. The two essentials to constitute a waiver of a condition broken at the time the policy is issued have been supposed to be actual knowledge of the agent and delivering the policy by the company. Hereafter in New York actual knowledge of the agent is unnecessary if he might have known, or has volunteered to find out. Constructive notice to the agent of material facts is made constructive notice to the insurance company. Since the rule as formerly applied was anomalous, the sound-